

October 17, 2014

**Via FOIA Online and Federal Express (with enclosures)**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667

**Re: FOIA Request for Records Pertaining to Implementation of Clean Water Act  
Provision Requiring Establishment of Criteria for the Development and  
Implementation of Local and Regional Oil and Hazardous Substance Removal  
Contingency Plans**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and applicable Environmental Protection Agency (EPA) regulations at 40 C.F.R. § 2.100-2.406.

**I. Description of Records Sought**

This request seeks EPA records<sup>1</sup> pertaining to EPA's implementation of section 311(j)(1)(B) of the Clean Water Act, under which EPA<sup>2</sup> must issue regulations "establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans." 33 U.S.C.A. § 1321(j)(1)(B). Specifically, NRDC requests records reflecting or pertaining to EPA's implementation of that portion of section 311(j)(1)(B)

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any EPA office.

<sup>2</sup> The President has delegated to EPA the authority under § 311(j)(1)(B) to establish criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans for the "inland zone." Exec. Order No. 12777, 56 Fed. Reg. 54757, 54760 (Oct. 18, 1991), *superseding* Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973).

that requires the promulgation of regulations “establishing criteria for the development and implementation of local and regional . . . hazardous substance removal contingency plans.” *Id.*

NRDC does not request records pertaining to EPA’s implementation of CERCLA.

## II. Request for a Fee Waiver

NRDC requests that EPA waive the fee that it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. §2.107(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(c)(1)(iii).

### A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); §40 C.F.R. § 2.107(l)(1). Each of the four factors used by EPA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 40 C.F.R. § 2.107(l)(2).

#### 1. *Subject of the request*

The records requested here pertain to EPA’s compliance with and implementation of section 311(j)(1)(B) of the Clean Water Act. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

#### 2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities, 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding EPA’s implementation of the statutory requirement to establish criteria for the development and implementation of local and regional hazardous substance removal contingency plans. To our knowledge, EPA has not promulgated any such regulation. The reasons for and history of EPA’s regulatory inaction are not public.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to requirements for local and regional hazardous substance removal contingency plans, as further discussed below. However, if EPA concludes that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure.*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, EPA must presume that this disclosure is likely to contribute to public understanding of its subject. 40 C.F.R. § 2.107(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in environmental risk mitigation policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal.

NRDC intends to analyze, digest, and disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC frequently digests and disseminates newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC’s more than one million members and online activists include “a broad audience of persons interested in the subject” of EPA’s implementation of the Clean Water Act and efforts to establish criteria for local and regional hazardous substance removal contingency plans, 40 C.F.R. § 2.107(l)(2)(iii), and when combined with NRDC’s communications to the public at large, the likely audience of interested persons to be reached is certainly “reasonably broad.” 40 C.F.R. § 2.107(l)(2)(iii). As NRDC’s long history of incorporating information obtained through FOIA into reports, articles and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected through this FOIA request through many channels. As of July 2014, these include, but are not limited to the following:

- NRDC’s website, available at <http://www.nrdc.org> (homepage at Att. 1), which is updated daily and draws approximately 1,280,000 page views and 590,000 unique visitors per month.
- *OnEarth* magazine (sample issue at Att. 2), which is available free of charge at <http://www.onearth.org>. The site is updated regularly, has about 33,700 email subscribers, and receives more than 41,000 unique visitors per month.
- *Nature’s Voice* newsletter on current environmental issues (sample issue at Att. 3), which is distributed four times a year to NRDC’s more than one million members and online activists, and is available online at <http://www.nrdc.org/naturesvoice/default.asp>.
- *Activist Network* email list (sample email at Att. 4), which has more than 540,000 members who receive biweekly information on urgent environmental issues. This information is also made available through NRDC’s online Action Center at <http://www.nrdc.org/action/default.asp> (Att. 5).

- *This Green Life*, which is an electronic newsletter on environmentally sustainable living. It is distributed by email to more than 57,000 subscribers (sample email at Att. 6) and made available online at <http://www.nrdc.org/thisgreenlife/default.asp> (Att. 7).
- *NRDC Online*, which is a monthly electronic environmental newsletter distributed by email to more than 81,000 subscribers, at <http://www.nrdc.org/newsletter> (Att. 8).
- “Switchboard,” available at <http://switchboard.nrdc.org> (Att. 9), which is a staff blogging site that is updated daily and features more than 250 bloggers writing about current environmental issues. The blogs draw approximately 150,000 page views and 125,000 unique visitors per month; Switchboard’s RSS feeds have approximately 11,150 subscribers; and Switchboard posts appear on websites of other major internet media outlets, such as “The Huffington Post,” at <http://www.huffingtonpost.com> (sample post at Att. 10).
- NRDC’s profiles on “Facebook,” at <http://www.facebook.com/nrdc.org> (Att. 11), and “Twitter,” at <http://www.twitter.com/nrdc> (Att. 12), are updated daily and have approximately 258,000 fans and 136,000 followers, respectively.

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Stories from the Gulf*, narrated by Robert Redford and *Acid Test*, narrated by Sigourney Weaver; participates in press conferences and interviews with reporters and editorial writers; and has approximately forty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 13);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 14); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 15);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 16);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 17);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 18);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 19);

- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring NRDC Water Program Co-Director Nancy Stoner) (Att. 20);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring NRDC Director for Market Innovation Rick Duke at 9) (Att. 21);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 22);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 23).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 24). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 25).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure the safety of these drug additives (Att. 26). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 27).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 28); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 29).

- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. See *Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 30). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. See, e.g., "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 31).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. See Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 32).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 33). NRDC's efforts cast light on an issue of considerable public interest. See, e.g., Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L. A. Times*, Mar. 28, 2002, at A22 (Att. 34).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 35); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L. A. Times*, Apr. 4, 2002, at A19 (Att. 36).

Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 37). The report guided interested members of the public on how to learn more about arsenic in their own

drinking water supplies. *Id.*; *see also* Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 38).<sup>3</sup>

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

#### *4. Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the steps the federal government has taken establish criteria for local and regional hazardous substance removal contingency plans and EPA’s implementation of the Clean Water Act. Numerous recent press reports have highlighted public concern about the cleanup of hazardous substance spills. *See, e.g.,*

- Exhibit A (Coral Davenport and Ashley Southall, “Critics Say Spill Highlights Lax West Virginia Regulations,” *The New York Times*, Jan. 12, 2014, [http://www.nytimes.com/2014/01/13/us/critics-say-chemical-spill-highlights-lax-west-virginia-regulations.html?\\_r=0](http://www.nytimes.com/2014/01/13/us/critics-say-chemical-spill-highlights-lax-west-virginia-regulations.html?_r=0));
- Exhibit B (Mark Niquette, Jim Snyder and Mark Drajem, “West Virginia Spill Prompts Drive for Tougher Regulations,” *Bloomberg*, Jan. 14, 2014, <http://www.bloomberg.com/news/print/2014-01-14/west-virginia-spill-sparks-drive-for-tougher-chemical-regulation.html>);
- Exhibit C (Aliah Git, “How safe is your tap water?” *CBS This Morning*, Jan. 14, 2014, <http://www.cbsnews.com/news/how-safe-is-your-tap-water/>);
- Exhibit D (“West Virginia spill a cautionary tale,” *Observer-Reporter*, Jan. 14, 2014, <http://www.observer-reporter.com/article/20140114/OPINION01/140119688#.Utgi6BBdWSo>);
- Exhibit E (Josh Eidelson, “The deplorable story of how 300,000 West Virginians lost their water,” *Salon.com*, Jan. 14, 2014, [http://www.salon.com/2014/01/14/the\\_deplorable\\_story\\_of\\_how\\_300000\\_west\\_virginians\\_lost\\_their\\_water/](http://www.salon.com/2014/01/14/the_deplorable_story_of_how_300000_west_virginians_lost_their_water/));
- Exhibit F (David Weigel, “No One Who Gives Away Free Water Can Be Evil,” *Slate.com*, Jan. 13, 2014, [http://www.slate.com/blogs/weigel/2014/01/13/no\\_one\\_who\\_gives\\_away\\_free\\_water\\_can\\_be\\_evil.html](http://www.slate.com/blogs/weigel/2014/01/13/no_one_who_gives_away_free_water_can_be_evil.html)).

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<sup>3</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. *See, e.g.,* Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 39); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 40); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 41).

As these illustrative articles indicate, there is public concern regarding the contingency plans in place for responding to a hazardous substance discharge. Public understanding of the federal government's efforts to establish criteria for local and regional hazardous substance removal contingency plans would be significantly enhanced by disclosure of the requested records concerning EPA's implementation of section 311(j)(1)(B) of the Clean Water Act. Disclosure would help the public to more effectively evaluate the potential threats to themselves and their families and the preparedness of their local and regional regulating bodies. Disclosure would also help the public to better understand and evaluate EPA's actions (or inaction) on the establishment of criteria for local and regional hazardous substance removal contingency plans and implementation of the Clean Water Act.

## **B. NRDC Satisfies the Second Fee Waiver Requirement**

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), (3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. "Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted); see *Natural Res. Def. Council v. United States Envtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008) (noting EPA acquiescence to this interpretation of legislative intent). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the federal government's implementation of those provisions of the Clean Water Act that mandate the establishment of criteria for local and regional hazardous substance removal contingency plans. As noted at Part II.A, any work done by EPA under section 311(j)(1)(B) of the Clean Water Act relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of federal agency efforts to mitigate risks associated with hazardous substance discharges and associated threats to human health and the environment.

## **C. NRDC Is a Media Requester**

Even if EPA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and EPA's FOIA regulations, 40 C.F.R. § 2.107(c)(1)(iii); see also 40 C.F.R. § 2.107(b)(6) (defining "[r]epresentative of the news media"). See *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 42) (granting NRDC media requester status).

NRDC is in part organized and operated to publish or transmit news to the public. As described earlier in this request, NRDC publishes a quarterly magazine, *OnEarth*, which has approximately 130,000 subscribers, is available at newsstands and bookstores, and has won numerous news media awards, including the Independent Press Award for Best Environmental



Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 40 C.F.R. § 2.107(b)(6) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogging site, “Switchboard,” which is updated daily and features more than 130 bloggers writing about current environmental issues, and through daily news messaging on “Twitter” and “Facebook.” *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs approximately thirty staff dedicated full-time to communications with the public, including accomplished journalists and editors, *see* list of select communications staff at <http://www.nrdc.org/about/staff.asp> (Att. 13). These staff rely on information acquired under FOIA and through other means. That NRDC is a public interest advocacy organization is inconsequential so long as “its activities qualify as those of a representative of news media,” and NRDC’s do. *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 12. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).<sup>4</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured in its *OnEarth* magazine, newsletters, blogs, and other NRDC-operated media outlets. NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above irrespective of the status and outcome of your evaluation of NRDC’s fee category status and fee waiver request. In order to prevent delay in EPA’s provision of the requested records, NRDC states that it will, if necessary and under protest, pay fees in accordance with EPA’s FOIA regulations at 40 C.F.R. § 2.107(c)(1)(iv) for all

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<sup>4</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

or a portion of the requested records. *See* 40 C.F.R. § 2.107(l)(4)]. Please consult with NRDC, however, before undertaking any action that would cause the fee to exceed \$250.00. Such payment will not constitute any waiver of NRDC's right to seek administrative or judicial review of any denial of its fee waiver request and/or rejection of its fee category assertion.

#### IV. Conclusion

We trust that, in responding to this request, EPA will comply with all relevant deadlines and other obligations set forth in FOIA and EPA's FOIA regulations. *See, e.g.*, 40 C.F.R. § 2.104 (describing response deadlines).

Please produce the records above by emailing or mailing them to me at the NRDC office address listed below. Please produce them on a rolling basis; at no point should EPA's search for—or deliberations concerning—certain records delay the production of others that EPA has already retrieved and elected to produce. In the event that EPA concludes that some of the records requested above may already be publicly available, we will be happy to discuss those conclusions.

Please do not hesitate to call or email with questions. I can be reached at (202) 513-6273, or at [jlee@nrdc.org](mailto:jlee@nrdc.org).

Thank you for your prompt attention to this request.

Sincerely,



Jennifer Lee  
Litigation Assistant  
Natural Resources Defense Council, Inc.  
1152 15th Street NW, Suite 300  
Washington, DC 20005

Enclosures (sent via FOIA Online and Federal Express on DVD)

Attachments 1 through 42 (single .pdf file)  
Exhibits A through F (single .pdf file)